Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

Comments Of:
The Oklahoma Rural Telephone Coalition
On Behalf Of:

Atlas Telephone Company
Beggs Telephone Company
Bixby Telephone Company, Inc.
Canadian Valley Telephone Company
Carnegie Telephone Company
Central Oklahoma Telephone Company
Cherokee Telephone Company
Chickasaw Telephone Company
Chouteau Telephone Company
Cimarron Telephone Company
Cross Telephone Company
Dobson Telephone Company
Grand Telephone Company
Hinton Telephone Company
KanOkla Telephone Association
McLoud Telephone Company
Medicine Park Telephone Company
Mid-America Telephone, Inc.
Oklahoma Communications Systems, Inc.
Oklahoma Telephone & Telegraph, Inc.
Oklahoma Western Telephone Company
Panhandle Telephone Cooperative, Inc.
Pine Telephone Company
Pinnacle Communications
Pioneer Telephone Cooperative, Inc.
Pottawatomie Telephone Company
Salina-Spavinaw Telephone Company
Santa Rosa Telephone Cooperative, Inc.
Shidler Telephone Company
South Central Telephone Association
Southwest Oklahoma Telephone Company
Terral Telephone Company
Totah Telephone Company
Valliant Telephone Company
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BACKGROUND

The Oklahoma Rural Telephone Coalition (ORTC) submits these comments in response to the Notice of Proposed Rulemaking (NPRM), released April 27, 2001, in the Matter of Developing a Unified Intercarrier Compensation Regime. The ORTC is a state association of small, rural Local Exchange Carriers (LECs) serving consumers in Oklahoma. All of the ORTC members are substantially less than 50,000 access lines in size or are cooperatives. The companies serve rural, sparsely populated and expansive geographic areas and provide high quality basic and enhanced telecommunications services that are comparable to those offered in urban areas at reasonable rates. The ORTC members, unlike larger LECs, are generally not toll or CMRS service providers, but instead, provide originating, transiting and terminating network access so that service providers may render retail service to their toll or CMRS customers in rural areas of Oklahoma. The ORTC members are participating in this NPRM, because, on the average, intercarrier compensation, including access charges, represents a large proportion, approximately 35%, of their revenues. The FCC Office of Plans and Policy working paper (OPP Staff) proposals, contained in the NPRM, to move to a bill-and-keep intercarrier compensation regime would eliminate this significant compensation revenue stream for the ORTC members and inappropriately transfer the responsibility for recovery for all of this cost based revenue to local exchange customers. This would increase local exchange rates by, on the average, $62.00 per month for the ORTC

members. As a result, the ORTC members felt compelled to file the following comments regarding the NPRM.

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SUMMARY OF COMMENTS

The move away from the current intercarrier compensation system to bill and keep for all interconnection traffic is theoretically and economically incorrect, at odds with the Act, harms consumers, and is impractical and costly to implement.

The current intercarrier compensation system for local, intrastate toll and interstate and intrastate access is a market-based tariff or contractual regime that has worked well for many years. This regime, as shown in these comments (Section IV), satisfies the goals set forth in this NPRM for an appropriate intercarrier compensation regime. Because the FCC apparently misunderstands the current regime, it should not be abandoned simply to be replaced with a bill and keep regime, as proposed by the OPP Staff. Bill-and-keep compensation is based on flawed theoretical and economic rationale and requires a great deal of inappropriate regulatory intervention equivalent to and resulting in price regulation[1]. The OPP Staff bill-and-keep proposals do not, as discussed

[1] Significant regulatory and pricing intervention by regulators (primarily state regulators) will be necessary to impose increased local exchange charges on customers to replace the existing intercarrier compensation revenue, if the current regime is replaced by a bill-and-keep methodology. Alternatively, as evidenced in paragraphs 99 to 111 of the NPRM, the FCC apparently believes that complex costing and pricing rules must be established by regulators to reform the existing system. Neither of these interventions, nor the imposition of price regulation by regulators is warranted. The intervention would harm consumers by significantly increasing their rates with no offsetting benefits (service providers will likely not in the long term, lower rates) or would harm the competitive market by imposing costing and pricing rules that would likely introduce market distortions. Instead of imposing further regulation, the FCC should retain the current primarily contractual and negotiated market based compensation system.

in Section VI (A) of these comments, satisfy the intercarrier compensation goals set forth by the FCC.

The presumed problems with the current regime, discussed by the FCC in the NPRM, have either been resolved or the FCC is in the process of resolving them, as discussed in Section III, V(C) and Attachment A of these comments. The major changes required now in the current intercarrier compensation regime are for the FCC to implement its CLEC Access Charge and ISP intercarrier compensation Orders and to transition ISP Internet-bound traffic compensation to bill-and-keep, as would be expected as a result of the FCC's access exemption for ISP traffic. These changes will result in lower access charge levels for CLECs and will begin to adjust a market distortion involving ISP Internet-bound traffic that was created by CLEC use of the current compensation regime. In the longer term, the FCC should eliminate the exemption for ISP Internet-bound traffic in order to insure that ISP service providers pay, as do other service providers for their customer's use of network facilities to originate, transport and terminate calls.[2] Other changes the FCC could consider are contained in Section VII of these comments.

Finally, as discussed in Section VI (B) and VI(C) of these comments, the OPP Staff bill-and-keep proposals for intercarrier compensation are at odds with the Act and ignore universal service concerns. The Act requires that only a reasonable share of local exchange costs be recovered from local exchange customers. The Staff proposals,

[2] The rural LECs who are members of the ORTC believe that all service providers, including ISPs, who utilize LEC facilities to complete calls should, on a competitively neutral basis, be responsible for and pay for all traffic that the service provider receives or delivers to LECs over facilities directly connected to those LECs. No service provider,

however, are at odds with this provision of the Act and would effectively and inappropriately recover all local exchange costs from local exchange customers. Additionally, conspicuously missing from the FCC's goals in this proceeding is the goal of promoting and advancing universally available service. The OPP Staff bill-and-keep proposals ignore universal service and customer concerns. The small LECs represented by the ORTC estimate that local exchange rates for the customers they serve would have to increase on the average by $62 per loop per month to recover lost interconnection compensation if the OPP Staff bill-and-keep intercarrier compensation proposals were adopted ($30 as a result of the elimination of Federal interconnection compensation and $32 as a result of the elimination of State interconnection compensation). Rural carriers recover a higher proportion of their revenues per-line from intercarrier compensation than do larger urban carriers and rely on these wholesale revenues to build and maintain the network. The elimination of intercarrier compensation, and the imposition of bill-and-keep, would cause proportionately higher increases in the rates for rural carrier end users, than would be the case for a larger urban carrier and its end users. If the revenues are not replaced, the result will be a deterioration of the rural telecommunications infrastructure.

It is simply unreasonable to expect end user customers to pay these inordinate increases, simply in order to allow service providers the use of the network of others for free and to provide them with a financial windfall. Recovery of these costs inappropriately from end users rather from the appropriate service provider will harm universal service because local rates will be increased to unreasonable and unaffordable

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such as an ISP, should receive an artificial and uneconomic market advantage by receiving an exemption from paying those charges.

levels, particularly in rural areas served by the ORTC companies in direct conflict with the Act and its goal of promoting universally available service.

--- III ---

THE CURRENT INTERCARRIER COMPENSATION REGIME WITH THE CHANGES RECENTLY MADE BY THE FCC, IS VALID, EFFICIENT, INCENTS INVESTMENT AND INTERCONNECTED COMPETITIVE NETWORKS

The current intercarrier compensation regime is based on a simple principle:

> The customer's service provider for toll or local service (LEC, IXC, CLEC or CMRS) bills the customer for the service provided, retains the revenues for the service, uses the revenues to cover its costs and is responsible for paying all other carriers (LECs, CLECs, CMRS) for the use of their networks to originate or transport or terminate the calls generated by the customer.

In plain language, the carrier that has the customer's revenues for a call, pays all other carriers (network access providers) whose facilities are used to complete the call. This is both an economically rational and practical compensation regime because the carriers whose networks are used to complete the call by the service provider's customer are compensated from the revenues collected from the customer by the customer's service provider. In and of itself, this process or regime creates no market distortions, encourages efficient interconnected use of the network, encourages investment in interconnected networks and thus insures efficient, competitively and technologically

neutral development of interconnected competitors. In general, the various types of intercarrier compensation arrangements are shown in the following table (a detailed discussion is included in Attachment A):

Service	Customers Service Provider	Originating Facilities Provided By	Transiting Facilities Provided By	Terminating Facilities Provided By
Interstate Toll				
IXC				
LEC or CLEC				
LEC or CLEC				
LEC or CLEC				
Intrastate Toll				
IXC				
LEC or CLEC				
LEC or CLEC				
LEC or CLEC				
Dial-up Internet				
ISP				
LEC or CLEC				
LEC or CLEC				
LEC or CLEC				
Wireless to wireline				
CMRS provider				
CMRS service provider				
LEC or CLEC				
LEC or CLEC				
Wireline to wireless				
LEC, CLEC or IXC Toll Provider				
LEC or CLEC service provider				
LEC or CLEC				
CMRS provider				
LEC or CLEC provided local or toll				
Originating customers LEC or CLEC				
Originating customers LEC or CLEC service provider				
LEC or CLEC				
LEC or CLEC				

In each of these arrangements, the customer's service provider bills the customer for the service provided (interstate or intrastate toll, wireless or local). For the origination of the

service, as shown in the table, the service provider pays other carriers (network access providers) for the use of their facilities to originate calls (IXC toll and ISP internet service) or uses the revenues collected to recover the costs of the originating facilities that the service provider owns (CMRS providers, LECs and CLECs). The service provider also pays other carriers (network access providers), as shown in the table, for the use of transiting facilities (if necessary) and terminating network facilities that are used to complete the call. As discussed previously, the reason for this compensation arrangement is simple and unrelated to economic theories about both originating and terminating end users benefiting from a call. The simple unifying principle of the current intercarrier compensation regime is that only the originating service provider has received revenues for the call (and presumably established its retail rate at a level to recover the costs to originate, transport and terminate the call) and thus must, if it uses another provider's facilities, pay for the use of those facilities.[3]

The current intercarrier compensation regime has occasionally been used by regulators to accomplish social objectives or has been misused by the interconnected carriers. These uses or misuses have resulted in disputes among carriers and have created the potential for market failure. These problems and their resolution are discussed in more detail in Attachment A, but briefly, they involve:

[3] The LECs filing these comments are network access providers. They provide the network facilities that retail toll, wireless and internet service providers utilize to complete (originate, transport and terminate) calls for their retail services in rural areas. The rural LEC network access providers have no retail relationship with the service provider's customer and therefore there is no basis, under the OPP Staff's bill-and-keep proposals, for the LEC access providers to charge local exchange end users connected to their network the access costs of these service providers.

1. LEC compensation rate levels – Initially, intercarrier compensation rates included significant levels of local exchange (predominately loop) costs. The Federal and State social policy objective for recovering these costs in intercarrier compensation rates (and thus in the retail rates of the service providers) was to lower (or support) the level of costs that must be recovered from basic local end users, thus keeping their rates low and thereby advancing the goal of universally available service.[4] In conformance with the Act[5], which requires that universal service support be explicit and thus not be included in intercarrier compensation rates, the FCC and State Commissions have removed or are in the process of removing these costs from intercarrier compensation rates and recovering them directly from the end user or from Universal Service Funds. Consequently, this problem is largely resolved or is being resolved.

2. CLEC access rate levels – Certain CLECs misused the intercarrier compensation process by charging inordinately high rates for network access to IXC service providers. This problem has been resolved by the FCC in the CLEC Access Charge Order[6], by limiting CLEC access rates to the level charged by the LEC serving the same geographic area.

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[4] Federal Communication Commission (FCC) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01-92, FCC 01-132, Released on April 27, 2001, paragraph 31.
[5] Federal Telecommunications Act of 1996 (Act), Section 254 (e).
[6] CC Docket No. 96-262, Seventh Report and Order, FCC 01-146, released April 27, 2001 (CLEC Access Charge Order).

3. Compensation for ISP Internet-bound traffic – As a result of the ISP access charge exemption, ISP service providers are allowed by the FCC to use the network facilities of other providers to originate, transport and terminate their traffic at a zero access rate (effectively bill-and-keep). Certain CLECs, however, used the current intercarrier compensation process to claim that traffic was subject to compensation from the ILEC under local interconnection agreements instead of compensation from the ISP. Through this use of the compensation process they were able to obtain intercarrier compensation from the LEC when the appropriate compensation should have been ISP access at a zero rate or bill-and-keep, under the FCC's exemption. This use of the current compensation process has created additional revenues for the CLECs and caused significant market distortions. These additional revenues and market distortion will, however, be alleviated by the FCC's recent ISP Intercarrier Compensation Order[7] which significantly reduces and phases down the rates, thus reducing the revenues received by CLECs, that may be charged by CLECs for ISP Internet-bound traffic. In the longer term, in order to completely rectify this problem, the FCC should eliminate the exemption for ISP Internet-bound traffic in order to insure that ISP service providers pay, as do other service providers for their customer's use of network facilities to originate, transport and terminate calls.

The current process is:

1. A unified intercarrier compensation regime. It is based on the principle that the service provider that has the customer's revenues for the call is responsible for paying

[7] CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131, released

all other interconnected providers whose network facilities are used to originate, transport and terminate the call for the use of their facilities.

2. Economically efficient, encourages investment in the existing and broadband networks, encourages interconnected competitors on a technologically and competitively neutral basis and does not lead to market distortions when applied properly (see section IV for a further discussion of how the current regime meets these goals). Market distortions may occur only when the process is misapplied, as with ISP Internet-bound traffic, and not corrected by the Commission that has regulatory jurisdiction. Similarly, competition may be affected if inappropriate rate levels occur, as with CLEC access charges, and the inappropriate rates are not dealt with by the Commission with jurisdiction over the traffic. The FCC has dealt with CLEC access charges and is in the process of dealing with the ISP Internet-bound traffic issue. These abuses of the current intercarrier process do not mean that the process should be replaced by a less appropriate process. Instead, abuses when they arise should be promptly dealt with.

3. Simple in concept and simple to implement.[8] Access charge compensation for IXC toll traffic is well understood and should be subject to minimal rate level

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April 27, 2001 (ISP Intercarrier Compensation Order).

[8] In paragraph 132 of the NPRM, the FCC states that: "The existing intercarrier compensation regime applies different sets of rules to different types of carriers and to different types of traffic." This is incorrect. The various existing (and future) intercarrier compensation arrangements fit into the simple and unified regime discussed in this section and Attachment A.

disputes in the future as a result of the significant rate reductions for the larger companies being instituted by the FCC and State Commissions. Likewise, there are hundreds of LEC to LEC intercarrier compensation agreements for local and intraLATA toll traffic and many CMRS compensation agreements that have been negotiated with minimal regulatory intervention. Although there have been disputes between LECs and CLECs over intercarrier compensation issues (primarily involving rate level issues), these disputes have largely now been resolved. Minimal regulatory intervention to correct market abuses or distortions should be necessary in the future.

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THE FCC'S NOTICE OF PROPOSED RULEMAKING

GENERAL COMMENTS

In the NPRM, the FCC states that it will "…begin a fundamental re-examination of all currently regulated forms of intercarrier compensation …" and "…test the concept of a unified regime[9] for the flow of payments among telecommunications carriers that result from the interconnection of telecommunications networks under current systems of regulation."[10] The FCC characterizes the existing compensation methods as "transitional" and indicates that a more permanent regime is necessary to consummate the pro-competitive vision of the Telecommunications Act of 1996 (Act). The FCC believes that these regimes need to be re-evaluated because of increasing competition and new technologies, such as the Internet and Internet based services and commercial mobile radio services (CMRS).[11] The basic criteria that the FCC expects to use to evaluate the appropriateness of a regulated intercarrier compensation regime are that the regime would:

[9] Even though the FCC is apparently striving to develop a unified intermarried compensation regime, non-regulated compensation arrangements involving CLEC-CLEC, IXC-IXC, CMRS-CMRS and CMRS-IXC traffic (and, although not mentioned by the FCC, ISP-ISP as well as CLEC-ISP and CMRS-ISP traffic arrangements) are exempt from this re-evaluation because the FCC asserts that they are not "…subject to rate regulation and…do not exhibit symptoms of market failure."(NPRM, paragraph 2). This statement by the FCC apparently evidences its belief that all forms of regulated intercarrier compensation (LEC-IXC access charges and CMRS-LEC, LEC-LEC and CLEC-LEC reciprocal compensation) are apparently exhibiting the symptoms of market failure that must be corrected through further regulation. Apparently, in the FCC's view, evidence of this asserted market failure, is exhibited by only two of the regulated compensation arrangements: (1) the dispute over compensation for ISP Internet-bound traffic (CLEC-LEC) and (2) the level of CLEC access charges (CLEC-IXC). Recent

1. Encourage economic efficiency (NPRM, paragraphs 31 to 33).
2. Encourage the efficient use of, and investment in, telecommunications networks, including broadband network facilities (NPRM, paragraphs 2 and 33).
3. Encourage the efficient development of competition (NPRM, paragraph 2) and the regime should be technologically and competitively neutral (NPRM, paragraph 33).
4. Minimize the need for regulatory intervention (NPRM, paragraphs 2 and 34).

As discussed in the preceding section, this fundamental re-examination is unnecessary. The current intercarrier compensation regime is built around a unified principle – the service provider with the revenues for the customer's call is responsible for paying all other carriers whose facilities are used to complete the call. This principle and the current intercarrier compensation regime satisfies each of the Commission goals:

1. The current intercarrier compensation regime encourages economic efficiency. The service provider, which has the revenues for a call, pays compensation for the use of other carrier facilities to complete the call. Intercarrier compensation levels are constrained to economic levels through contractual negotiations, competition and, if necessary, through a normal dispute process – the courts or regulatory intervention

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Orders by the FCC have curbed the CLEC generated market abuses by limiting the compensation that CLECs may receive for both ISP Internet-bound traffic and access charges. As shown in these comments, the current intercarrier compensation regime is not exhibiting symptoms of market failure and need not be replaced.

[10] NPRM, paragraph 1.
[11] NPRM, paragraphs 1 and 2.

(as was the case with the CLEC Access Charge and ISP Intercarrier Compensation Orders). Likewise, the service provider's retail rates reflect all of the calls costs – its own and those of interconnected providers whose facilities are used to complete the call. This regime insures the service provider's retail rates are established at appropriate market levels and insures that appropriate entry and exit market signals are given to competitors.

2. The current intercarrier compensation regime encourages investment in interconnected networks and encourages, rather than discourages, broadband investment. Carriers, both LEC and CLEC, are incented to place appropriate levels of investment (based on traffic levels) and interconnect their networks because they will be paid for the use of their facilities to originate, transport and terminate calls originated by service providers. The current intercarrier compensation process provides no barrier to efficient deployment of broadband facilities and services. In other words, there is no barrier created, as a result of intercarrier compensation, to the deployment of broadband services as an alternative to the provision of dial-up service.

3. The current intercarrier compensation regime encourages the efficient development of competition. Because appropriate market signals are given as to the costs of completing calls, competitive carriers are able to determine if it is appropriate for them to enter markets and provide service at competitive retail rate levels. Proper application of the current intercarrier compensation regime will avoid the competitive

market distortions that occurred with compensation for ISP Internet-bound traffic and insure that competitors will not have a disincentive to serve all market segments (residential and business, rural and urban). On the other hand, regulatory intervention in the form of bill-and-keep compensation will only promote competition for competition's sake and in the long run distort the market, ultimately resulting in a lack of competition and efficiency, particularly in rural areas.

4. The current intercarrier compensation regime minimizes regulatory intervention. The major issues with the current intercarrier compensation regime are rate level issues. The LEC and CLEC access charge proceedings as well as the CMRS and ISP Intercarrier Compensation proceedings have largely resolved these issues. Expediency in the form of bill-and-keep that may minimize regulatory intervention[12] should not be the governing factor in evaluating a compensation regime. Tariffs and contractual arrangements, which are the basis of the current intercarrier compensation regime, will from time to time be the subject of disputes between the parties. The proper way to resolve these disputes is through a review of the agreement by the appropriate regulatory or judicial authority.

[12] In fact, as discussed herein, bill-and-keep may introduce a host of new problems calling for increased regulatory intervention.

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THE EXISTING INTERCARRIER COMPENSATION REGIME DOES NOT NEED TO BE REPLACED OR REVISED

A. The FCC Misunderstands the Current Intercarrier Compensation Process.

In the NPRM, the FCC characterizes existing interconnection agreements as "…governed by a complex system of intercarrier compensation regulations. These regulations treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services. The interconnection regime that applies in a particular case depends on such factors as: whether the interconnecting party is a local carrier, an interexchange carrier, a CMRS carrier or an enhanced service provider; and whether the service is classified as local or long-distance, interstate or intrastate, or basic or enhanced."[13] The FCC further describes the current system as "…referred to as 'calling-party's-network-pays' (or 'CPNP')."[14]

These comments indicate a misunderstanding of the current intercarrier compensation system. As discussed previously, there is one simple unifying principle underlying all of the current intercarrier arrangements – The service provider who has the customer's revenues for the call pays all of the interconnected carriers whose networks are used to complete the call. At odds with the FCC's observations, different types of carriers and services are not treated disparately. In fact, the current regime treats them all the same (unless regulatory intervention causes disparate treatment as has been the case with the treatment of ISP Internet-bound traffic). Under the current regime, if the carrier

[13] NPRM, paragraph 5.

is the service provider it must pay all other carriers whose network is used to complete the service providers calls - IXC service providers must pay access charge compensation for the use of LEC and CLEC networks to complete calls; ISP service providers would pay access compensation (were it not for the FCC imposed exemption) for the use of LEC and CLEC networks to complete their calls; CMRS service providers must pay negotiated compensation for the use of LEC and CLEC networks to complete their calls; and finally LEC and CLEC service providers pay each other and CMRS providers negotiated compensation for the use of their respective networks to complete calls.

The FCC has also mislabeled the current intercarrier compensation system as the calling party's network pays (CPNP) regime. The calling party's network provider does not pay when the service provider is an IXC or an ISP. The IXC or ISP does not provide the calling party's network but simply uses that network (operated by a LEC or CLEC) to originate the IXC or ISP customer's calls. Consequently the IXC and the ISP (were it not for the exemption) pay originating compensation in the form of access charges to the LEC or CLEC whose network is used to originate calls. Only where the customer's service provider is also the network provider (for instance, when CMRS, LEC and CLEC service providers provide interconnected local service), does the calling party's service provider, who is also the network provider, pay. In this case (as with the IXC's originating network compensation) the originating service provider must establish a customer rate for the service that will cover its originating network costs as well as compensation paid to other carriers for the use of their networks to transport and terminate the call. The current intercarrier compensation regime is more correctly

[14] NPRM, paragraph 9.

labeled Originating Customer's Service Provider Pays. The service provider is not the network provider in all cases and consequently, CPNP is an inappropriate description.

In its brief summary of the current intercarrier compensation regime, the FCC has apparently confused the current compensation regime or process with the rates utilized in that process for compensation. The current process is simple in concept and in real-world application. It is not governed by a complex system of intercarrier compensation regulations, as the FCC apparently believes. The current system does, however, rely on differing compensation rate levels. The reasons for these differing rate levels (which seems to be at the heart of the FCC's concerns about the current compensation system) are straightforward:

1. There may be two differing access charge compensation rates because there are two jurisdictions – FCC and State Commission. Currently, and increasingly into the future, these differing rate levels are of little concern for large LECs because of the substantive access rate reductions that are and will be made, and because a substantial number of carriers use the same intrastate access rates as interstate access rates (state rates mirror the Federal rates). For small rural LEC access providers, the access rates may be somewhat different between the two jurisdictions because of their unique serving areas and arrangements. However, these rates, even if different, are based on and reflective of, the rural LEC's costs to provide network facilities to service providers.

2. CLEC, CMRS and LEC compensation rates are largely the product of the negotiation process and thus may be somewhat different depending on the network facilities provided, the geographic area served or the amounts of traffic traded between their networks. For instance, carriers may agree to a bill-and-keep compensation rate if they have similar network costs for the facilities they provide to each other to complete calls and if the level of traffic that they trade is roughly equal. On the other hand, if costs and traffic levels are unequal, compensation rate levels will reflect these differences. Similarly, if the geographic area encompasses an expanded local calling area, and not just the local exchange calling area, the rate will be higher to reflect the additional facilities involved. As required by the Act, these negotiated arrangements reflect the carrier's costs.[15]

Although the differing compensation rate levels may appear confusing to the FCC, at odds with their belief, the process does not treat differing services and carriers disparately. The rate structure portion of the existing compensation regime is fair to all carriers and treats them all equally. Carriers may participate in the tariffing process that establishes access rates, as the IXC's have routinely done for years. Similarly, as LECs have done for years, CLECs and CMRS providers now participate in the negotiation process that establishes their compensation rate levels. The playing field is level and competitively neutral in this process. Compensation rates negotiated with one service provider are often available to other similarly situated service providers.

[15] Act, Section 252 (d)(2)(A).

B. The FCC Misunderstands the Basis For the Current Intercarrier Compensation Regime.

In paragraphs 19 to 21 and 37 of its NPRM, the FCC briefly discusses its view that the rationale for the current intercarrier compensation regime is that the calling party is the sole causer and sole beneficiary of a call. In paragraph 37, the FCC states that the current regime "… may be viewed as implicitly embracing the premise that the originating caller receives all of the benefits of a call and should, therefore bear the costs of both origination and termination." This view is incorrect and shows a fundamental misunderstanding of the basis and practical reasons for the current intercarrier compensation process. The practical reason for the current compensation system, and its underlying basis is that the carrier (service provider) which receives the retail revenue from the end user for the call is responsible for recovering its own costs from these revenues and paying all other carriers (network access providers) involved in originating, transporting and terminating the call. There is no global economic theory behind the current compensation process. Instead, the intent of the current regime is to insure that all network access carriers that provide facilities to complete the call are compensated for the use of their facilities. The only carrier that has revenues from the customer for the call is the customer's service provider. Consequently the service provider is responsible for using the revenues to cover its costs and to pay all network access carriers for the use of their facilities to complete the call. The only relevance that the originating end-user customer has in this process is that the customer provides the revenues to its service provider for the call so that the service provider can fulfill its compensation obligations.

As a result of this misunderstanding of the current intercarrier compensation regime or process and based on presumed problems which have largely been resolved, the OPP Staff constructs an elaborate, complex and invalid theoretical rationale to justify the replacement of the current intercarrier compensation regime with a bill-and-keep regime. The replacement of the current intercarrier compensation regime is, however, unnecessary because the current regime:

- Is a unified regime with a common underlying premise that governs its implementation – See Section III of these comments.

- Meets the goals of (a) economic efficiency, (b) encouraging efficient network investment and broadband deployment, (c) technological and competitive neutrality and (d) minimizing regulatory involvement – see Section IV of these comments.

- Does not contribute to the issues raised by the FCC that are discussed in Section V (C) of these comments.

In summary, the current regime is practically appropriate and fulfills the Commissions goals. The Commission should not thoroughly disrupt a valid and working process in order to adopt a theoretically flawed alternative. Instead, the current intercarrier compensation process should be retained.

C. The Issues the FCC raises About the Existing Intercarrier Compensation Regime Are Not Applicable or Have Already Been Resolved.

In paragraphs 11 to 18 of the NPRM, the FCC discusses several "pressing issues" raised by the existing intercarrier compensation rules. These issues are either non-applicable or have been largely resolved by recent FCC actions. If minimal issues do exist, they are not insoluble issues requiring the replacement of the current efficient and workable compensation regime with a flawed theoretical regime requiring significant regulatory intervention equivalent to and resulting in price regulation.

1. Opportunities for Regulatory Arbitrage. The FCC lists "inefficient compensation rates" as a cause for arbitrage. Compensation for ISP traffic is used as an example of rates that are inefficiently set too high and generate windfall profits for terminating networks, thus causing CLECs to target customers that primarily receive traffic. As discussed in Attachment A, this inefficiency has resulted from CLEC misapplication of the current interconnection process and is not a product of the process itself. The FCC has begun to remedy this problem in the ISP Intercarrier Compensation Order by lowering the termination rates for ISP Internet-bound traffic. Additionally, the larger urban LECs and CLECs have, through the negotiation and arbitration process, begun to restructure the rates for primarily one-way traffic to cap the termination payments to insure that CLECs and LECs are not overcompensated for traffic terminated to their networks. This ISP Internet-bound traffic issue may be dealt with on an interim basis in this proceeding if the FCC applies access charges at a zero rate (bill-and-keep) to this traffic, as long as the ISP access charge exemption is in place. In the longer term, the FCC should eliminate the

exemption for ISP Internet-bound traffic in order to insure that ISP service providers pay, as do other service providers for their customer's use of network facilities to originate, transport and terminate calls.

The FCC also indicates that different service providers pay differing rates for essentially the same type of call. The example they use is long-distance calling via an IXC that pays access charges in compensation for the use of a CLECs or LECs network versus an ISP IP telephony long-distance call where the ISP pays nothing for the use of the CLEC or LEC networks. This arbitrage results from apparent FCC reluctance to make ISPs follow the same rules that IXCs must follow. The ISP exemption to paying access charges was for information service traffic using the switched network. Arguably, this exemption did not run to voice long-distance traffic carried over the Internet and thus this traffic, when identified could be subject to access charges. The FCC has demurred, however, from allowing LECs to charge access charges to ISPs for this traffic. The interim solution could be for the FCC to allow any LEC that can identify this traffic to begin to charge access rates to the ISP service provider. If the FCC were to eliminate the exemption for ISP Internet-bound traffic, this problem would no longer exist. Short of this action, alternative LEC and CLEC services, such as DSL, will ameliorate this problem.

2. Terminating Access Monopolies. The FCC explains that this problem arises because a service provider has no choice but to deliver traffic for termination to the carrier's network to which the customer is connected and to pay that carrier's termination rates. Presumably, the problem is that the carrier whose terminating network is used to

deliver the call will be incented to charge rates that are well above its costs and thus derive windfall profits. With recent FCC actions to reduce access rates and as a result of the CLEC Access Charge Order, this appears to be a non-issue. Large LEC terminating access rates are dropping significantly (and rural LEC rates may follow) and CLEC access rates are essentially constrained to the LEC level.

The FCC also relates a concern that when LECs are competing with IXCs for toll service, and because LECs are also the IXCs access provider and charge the IXC access charges, the LEC may have the incentive to discriminate in favor of their long-distance services by engaging in a predatory price squeeze.[16] Although IXCs routinely make this argument, it is simply incorrect. LEC service providers must recover their network costs (costs similar to those charged to IXCs) in the rates that they charge to consumers. In fact, LECs are often required to impute access rates into their retail rates to insure that their competitive toll services are on an equal footing with those of their IXC competitors. This process protects against a predatory price squeeze and insures that both competitors operate on competitively neutral basis. Existing FCC regulations prohibit favoring affiliates over competitors.

3. The FCC questions whether differing types of networks require different interconnection rates. It is highly likely that CMRS providers and LECs, and potentially CLECs and LECs, have differing network cost characteristics. As the FCC notes, it has required LEC interconnection rates with CMRS providers and CLECs to be symmetrical

and equal the LECs costs. The FCC's apparent concern is that if this requirement is lifted, regulators may have to evaluate the costs of differing networks. The solution to this concern is for the regulators to allow carriers, without regulatory intervention in the form of repeated cost proceedings and analysis[17], to negotiate compensation agreements based on their costs if they wish, or to use symmetrical and equal rates if that is acceptable in their negotiations. If disputes arise, they can be arbitrated by the appropriate judicial or regulatory authority.[18]

4. Inefficient Intercarrier Compensation Rates Distort the Structure and Level of End-User Charges. The FCC is concerned that non-traffic sensitive cost recovery on a traffic sensitive basis via compensation rates will put pressure on the service provider paying these charges to adopt traffic-sensitive retail prices. Again the FCC should rely on the market-based negotiations between carriers to resolve these concerns. Large LECs in their compensation agreements have recognized and dealt with this concern by capping compensation payments or structuring compensation rates to appropriately recover non-traffic sensitive versus traffic sensitive costs. Negotiated interconnection compensation agreements between CLECs and large LECs are beginning to recognize and deal with this differing structure of recovery for non-traffic and traffic sensitive costs.

5. Distortion of an Entity's Subscription Decision. The FCC is concerned that if interconnection rates are above cost, an entity that primarily receives traffic may claim to

[16] This is not an issue with rural LEC access providers who do not provide long distance toll services in competition with IXCs.
[17] As the FCC is apparently proposing in paragraphs 99 to 111 of the NPRM.

be a network rather than subscribe as an end-user customer. The FCC has already begun to remedy this potential problem by lowering termination compensation rates. Additionally, LECs and CLECs, through the negotiation and arbitration process, have begun to restructure the rates for primarily one-way traffic to cap the termination payments in an attempt to insure that CLECs and LECs are not overcompensated for traffic terminated to their networks. Consequently, because this potential issue is already being addressed by FCC action and through the contract negotiation process, it is unlikely that entities will make incorrect subscription decisions.

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THE OPP STAFF'S INTERCARRIER COMPENSATION ALTERNATIVES ARE THEORETICALLY FLAWED, BASED ON INCORRECT ASSUMPTIONS, AT ODDS WITH THE ACT AND WOULD, IF ADOPTED, HARM CONSUMERS

The FCC requests (1) comments on the feasibility of bill-and-keep as the compensation method to be used in the new unified regime[19] or (2) alternative comments on modifications to the existing compensation regime.[20] Apparently, based on two abuses of the current intercarrier compensation regime by CLECs (involving ISP traffic and access charges[21]), the FCC wrongly extrapolates that the other regulated compensation arrangements (reciprocal compensation and access charges) involving

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[18] This is the process provided for in the Act, Sections 251 and 252.
[19] NPRM, paragraph 4.
[20] NPRM, paragraph 98.
[21] NPRM, paragraph 3. As the FCC explains, both of these abuses have been or are being dealt with.

LECs, IXCs and CMRS providers, should also be evaluated to determine if bill-and-keep is appropriate and would solve alleged problems that exist in the current compensation regime. As discussed in the preceding section, the current regime does not have problems that have not already been dealt with or are in the process of being dealt with. Rather than move to bill-and-keep, which will deteriorate universal service, and create further regulatory problems and the need for further intervention, the FCC should allow carriers, without regulatory intervention in the form of repeated cost proceedings and analysis to negotiate compensation agreements based on their costs if they wish, or to use symmetrical and equal rates if that is acceptable in their negotiations.

A. The Proposed OPP Staff Bill-and-Keep Alternatives are Theoretically Flawed and Based on Incorrect Economic Assumptions.

The FCC presents two alternative intercarrier compensation mechanisms that it suggests would remedy the alleged shortcomings of the current intercarrier regime. As the FCC notes, "…both [alternatives] offer justifications for a bill-and-keep approach to intercarrier compensation. Both…propose default interconnection rules that would apply only when carriers cannot agree on the terms for interconnection."[22]

[22] NPRM, paragraph 22, information in brackets added for clarity. The default nature of these plans will insure that carriers will have no incentive to negotiate compensation arrangements. In most compensation arrangements traffic imbalances or cost differences may exist. Under these Staff plans, the carrier that would have to pay more for the use of the other provider's facilities would have no incentive to negotiate. Instead, the carrier can simply force a default to bill-and-keep and avoid paying the appropriate charges.

The first OPP Staff alternative is termed Central Office Bill and Keep (COBAK). This bill-and-keep compensation plan has the following features: [23]

- The costs of loop and local switching facilities used to terminate a service providers customers call would be recovered from the called customer, not the service provider.

- The calling party's (service providers) network is responsible for the cost of transporting the call to the called party's central office. The transport facilities may be constructed by the calling party's network or purchased from another carrier.

- The theoretical rationale is that "…both parties [calling and called] generally benefit from participating in a call."

The alleged benefits[24] claimed by the plan's author are that:

- Regulatory arbitrage will be significantly reduced - the ISP reciprocal compensation problem and the regulatory advantage IP telephony providers have over traditional IXCs will be dealt with.[25]

[23] NPRM, paragraph 23.
[24] NPRM, paragraph 24.
[25] In reality, the ISP problem is being been dealt with by the FCC's recent ISP Intercarrier Compensation Order (and possible further FCC action) and the arbitrage problem can be dealt with as discussed in section VII of these comments.

- Terminating access monopolies will be eliminated or significantly reduced.[26]

- Eliminating per-minute interconnection charges will lead to more efficient retail network rates and network usage.[27]

- The need for regulatory intervention will be reduced – there will be no need for regulators to determine the economically efficient level and structure of interconnection charges.[28]

The second OPP Staff alternative is termed Bill Access to Subscribers – Interconnection Cost Split (BASICS). This bill-and-keep compensation plan has the following features:[29]

- Networks should recover all network costs used for intercarrier calling from their own end users. In other words, the carrier whose network is used to terminate a call cannot charge the service provider for the use of its facilities. Instead, it must charge its own end user, to whom the call is terminated.

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[26] This issue has already been dealt with as a result of FCC and State actions reducing access rates and by the FCC's CLEC Access Charge Order.

[27] This is unlikely. End user rates will be forced to uneconomically increase to recover service provider costs and service providers will likely not, in the long term, reduce their rates to reflect the lower costs.

[28] As discussed herein, the need for regulatory intervention will likely increase. Additionally, there is no need under the current regime for regulators to determine the economically efficient level and structure of interconnection charges, this is accomplished by the market.

- Networks should divide equally the costs that result purely from interconnection.

The alleged benefits[30] claimed by the authors of this plan are:

- Carriers would be induced to negotiate efficient interconnection agreements.[31]

- Regulators would not need to intervene unless the negotiation and arbitration procedures failed to produce an agreement.[32]

- The common cost allocation problem (level of recovery of network terminating costs, i.e., loop and local switching) is entirely avoided.[33]

- The plan produces an efficient allocation of interconnection costs between carriers, irrespective of the balance of traffic between the carriers.[34]

Even though they are called by differing names, both of these OPP Staff plans accomplish the same result. Service providers that use the network of other carriers to

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[29] NPRM, paragraph 25.
[30] NPRM, paragraph 29.
[31] Due to the default nature of the proposal, this is not the case.
[32] This is also true of the current interconnection regime.
[33] This problem has already been resolved or is being resolved by the FCC and is in the process of being resolved by State Commissions who have or are removing, to the extent necessary, the common costs of larger carriers from carrier compensation and recovering them instead from end users or universal service funds.

originate, transport and terminate their customers calls no longer will pay for the use of those facilities. Instead, the cost of these facilities would be recovered from the network or access provider's end user customers (including charges for unwanted calls), either (A) by a flat rate increase in the basic local rate of the originating and terminating network provider[35] or (B) both the originating and terminating customer would be billed a usage sensitive originating or terminating charge directly by the network provider to which the customer is connected, rather than the service provider.[36]

The economic and policy justification for this increase in the customer's basic local rates is that when a service provider's customer places a call, "…it provides a benefit to both the originating caller and to … the called party. As a consequence, there may be no reason why both…[network providers] should not recover the costs of providing these benefits directly from…end users. Bill-and-keep provides a mechanism whereby end users pay for the benefits of making and receiving calls."[37]

An evaluation of the OPP Staff bill and keep plans (COBAK and BASICS) in light of the intercarrier compensation goals presented by the FCC in the NPRM, demonstrates that these bill-and-keep plans are flawed, incorrect and inappropriate and should not be adopted by the FCC:

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[34] This is incorrect. Under the OPP Staff plans, end users with service providers having a higher percentage of terminating usage, incur higher costs and rates.
[35] NPRM, paragraphs 51, 60 and 123.
[36] NPRM, paragraphs 55,123. Billing a usage sensitive charge to the end user as proposed by the OPP Staff would create significant additional billing costs, customer confusion and the need for further regulatory intervention.
[37] NPRM, paragraph 37, information in brackets added for clarity.

1. Bill-and-keep for all intercarrier compensation will not encourage economic efficiency. Free use of another carrier's facilities to complete a service provider's calls is not economically efficient. Economic efficiency, in the context usually used by the FCC would mean that a service provider would pay cost based rates for the use of these facilities. A bill-and-keep compensation regime only is efficient when both service providers have approximately the same costs and trade approximately the same amount of traffic. If the costs and/or the traffic levels of the providers are significantly different, bill-and-keep is economically inefficient. Such is the case with ORTC companies who serve sparsely populated rural areas as opposed to interconnected carriers, such as IXCs, ISPs, and CMRS providers, whose costs and traffic volumes are quite different from ORTC companies. It is also at odds with generally understood economic principles to assert, in the face of the evidence, that the called party always receives as much benefit from a call as the calling party, and therefore should pay for the network costs to terminate a service providers call. This notion is the theoretical economic underpinning of both OPP Staff bill-and-keep proposals. However, this notion is theoretically, economically and practically wrong.

- Theoretically, called customers do not benefit from the majority of calls they receive. In many cases, they did not initiate the call, did not request it and consequently are not responsible for the costs incurred resulting from the call initiated by the calling party. The economic choice to incur costs was made by the calling, not the called party. The OPP Staff theory that the calling party benefits from calls made by others and thus should be made to pay for the call

flies in the face of normal economic (and for that matter contractual) theory, that a party (in this case the called party) must take some overt action (buy a product or service) and agree to the charges for the product or service to be charged for the costs of the product or service. The called party in many instances made no such choice, and consequently should not be held liable for the costs of the call. The basic theory underlying the bill-and-keep proposals is flawed and will not support the tenets of the proposals.

- Economically, the only beneficiaries of this proposal are the service providers. They will receive incorrect economic cost signals to enter the respective market as a service provider for toll, CMRS and local service because they do not have to face or deal with all of the costs they incur for providing the service. The result will be uneconomic rate structures and prices. A likely outcome will be similar to the situation with ISP's caused by the FCC access charge exemption. ISP's have not had to pay for a fraction of the network facility costs that their customer's ISP Internet-bound dial-up calls have caused. As a consequence, because of the incorrect economic signals that the exemption (effectively bill-and-keep) sent, ISPs miss-structured and miss-priced their services. They adopted low flat rate pricing for a traffic sensitive dial-up service that did not reflect the actual costs of providing the service. The result was network congestion and deterioration of dial-up service in certain locations due to the huge increase in uneconomic dial-up Internet usage. Massive trunking and switching costs were incurred by the LECs in order to restore service and to provide facilities necessary to complete these

uneconomic calls. As a result of the FCC's bill-and-keep access exemption, neither ISPs nor their customers who caused these costs had to pay for them. Instead, these costs are being recovered from consumers who did not cause them and who should not be responsible for their recovery – the general body of local exchange customers. This example shows that bill-and-keep is simply wrong economic theory and should not be adopted for all intercarrier compensation. This is particularly true for access charge intercarrier compensation involving IXCs where the IXC service provider (like the ISP) is using LEC or CLEC facilities to complete the entire call (to originate, transport and terminate). It is also true of most other intercarrier arrangements in which the balance of traffic exchanged between the service providers is unequal.[38] In short, the uneconomic ISP experience, caused by inappropriate regulatory intervention, should not, through further inappropriate regulatory intervention, be extended to all intercarrier compensation. If the OPP Staff proposals are adopted, the wrong

[38] Generally, the only time that bill-and-keep or a variation of bill and keep is utilized in current negotiated intercarrier compensation agreements (excluding the uneconomic situation with ISP Internet-bound traffic), is when the interconnected service providers trade roughly equal traffic and their cost structures are roughly equal. One variation of this is called a 50/50 settlement plan that has been used by LECs for many years. Use of this plan assumes that the service providing LECs have roughly equal traffic volumes and termination costs. Consequently, the service providing LECs do not pay each other for the cost of termination of their calls on each other's networks. They do however, share the network transport costs – the service provider with the longer distance to haul the traffic, thus incurring higher transport costs, is compensated for this additional cost (in order to achieve a balance of transport costs) by the service provider with the shorter transport distance. This current intercarrier compensation plan is remarkably similar to the two proposed by the OPP Staff, except that this plan is economic because both service providers have roughly equal traffic volumes and costs. However, bill-and-keep only works when traffic and costs are similar. This is certainly not the case in most, if nor all, rural LEC compensation arraignments. The OPP Staff plans would uneconomically

parties, the called party or the general body of customers on the terminating carriers network, will pay while the service providers (who likely will not pass any or all of the savings along to their customers) get a free network ride. This certainly cannot pass for valid economic theory.

- Practically, the bill-and-keep proposals do not pass muster. All one has to do is ask the called party if they benefited from most of the calls they receive. The likely answer is no. Theory and economics aside, the called party does not, in a significant number of cases, benefit from the call (solicitations for money, business solicitations; wrong numbers, etc.) but would be charged, under the OPP Staff proposals, for the costs to terminate the call.[39]

2. Bill-and keep for all intercarrier compensation does not encourage the efficient use of, and investment in, telecommunications networks, including broadband network facilities. Not being paid for facilities utilized by another service provider, and instead having to recover the costs of those facilities, if possible, from the wrong customer (the general body of customers connected to your network), is unlikely to incent any network provider to invest in network facilities required for interconnected

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extend bill-and-keep to all traffic between service providers, even when traffic and cost imbalances exist.

[39] In paragraph 55 of the NPRM, the FCC asks: "What measures, if any, might we adopt to protect called parties from charges for unwanted calls?" (See also paragraph 60). The FCC can create no workable means to accomplish this. If customer's rates are increased on a flat rate basis, no means will exist to exclude unwanted calls because they will likely not be tracked. If usage sensitive or flat rate charges are applied, exclusion of unwanted calls would rely on customer reporting. This is an unworkable process because, even if

networks. Bill-and-keep will, as discussed in the preceding section, inappropriately incent service providers to uneconomically structure their services and rates (as the ISPs have done). This will lead to inefficient use of the telecommunications network and quite likely, the demand for uneconomic network investment to be placed by network providers who are interconnected with the service providers (again the ISP experience shows that this will occur). Network providers will be reluctant to make these uneconomic investments, however, because local end user rates will have to be increased to cover the costs. Unfortunately, it is exceedingly difficult to increase end user rates – normally, there is intense pressure to maintain them at their current levels or reduce them, not increase them. As a result, there will be a significant disincentive not to make the network expenditures that will be caused by the OPP Staff's bill-and-keep plans. In a similar vein, if network providers must make uneconomic investments as a result of the OPP Staff's bill-and-keep plans, and find themselves in the likely position of not being able to recover these investments, they will have fewer funds available to invest in broadband network facilities and to maintain the existing high quality network. This may cause carriers to look to both federal and state universal service funds for the revenues to maintain high quality networks.

3. Bill-and-keep for all intercarrier compensation will not encourage the efficient development of competition. Competitors, particularly those who terminate more traffic than they originate, and which have a small body of customers from which they may recover the termination costs, could be driven (unecomically) out of

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billing systems could be built to handle this exclusion of calls (and they cannot),

business. In other words, many current CLEC businesses would be in jeopardy as a result of inappropriate regulatory intervention. On the other hand, CLECs, as a result of the imposition of bill-and-keep may change their business plans to serve customers with predominately originating traffic, thus avoiding the bill-and-keep imposed terminating charges to their end users. In either case the efficient development of competition is not served. Competitors should be incented through proper economic price signals to serve all consumers (including rural and urban residential customers). Again, the ISP compensation experience should be a guide about what not to do when incenting efficient competition. As a result of the FCC access charge exemption and the resulting CLEC misuse of the current intercarrier compensation regime, the efficient development of competition was retarded (see Attachment A for a more detailed discussion). It would be unfortunate to repeat this mistake as a result of further and unneeded regulatory intervention by imposition of a bill-and-keep intercarrier compensation regime.

4. Bill-and-keep for all intercarrier compensation would not minimize the need for regulatory intervention. Further regulatory intervention as a result of the current intercarrier compensation regime is likely to be minimal. The large LEC and CLEC access charge proceedings as well as the ISP Intercarrier Compensation proceeding have largely resolved issues with the current regime.[40] Expediency in the form of

customers have every incentive to misreport.

[40] In the longer term, the FCC should eliminate the exemption for ISP Internet-bound traffic in order to insure that ISP service providers pay, as do other service providers for their customer's use of network facilities to originate, transport and terminate calls.

bill-and-keep that may minimize regulatory intervention[41] should not be the governing factor in evaluating a compensation regime. Tariffs and contractual arrangements, which are the basis of the current intercarrier compensation regime, will from time to time be the subject of disputes between the parties. The proper way to resolve these disputes is through review by the appropriate regulatory or judicial authority. Adoption of bill-and-keep will create the need for a whole new regime of regulatory intervention (primarily by State Commissions) as carriers attempt to recover intercarrier compensation costs (including intercarrier costs now assigned to interstate[42]) from local exchange end users. This recovery is likely to be vigorously opposed at the intrastate level by many parties, including State Commissions, Legislatures, and end users.

As this brief analysis shows, the proposed OPP Staff bill-and-keep plans for all intercarrier compensation are theoretically and economically inappropriate in view of the FCC goals for an intercarrier compensation regime. Imposition of this regime by the FCC would create many more problems involving economic distortion of markets, disincentives to place network investment and disincentives for full economic competitive entry. Regulatory intervention would likely have to increase to correct the problems introduced by implementation of these inappropriate plans. Alternatively, as

[41] In fact, as discussed herein, bill-and-keep may introduce a host of new problems calling for regulatory intervention.

[42] The OPP Staff in their bill-and-keep proposals are proposing to shift interstate access costs to the intrastate jurisdiction for recovery from local exchange end users. Before this proposal could be adopted by the FCC, it would have to be the subject of a Federal-State Joint Board proceeding (per Section 410C of the Act) with a recommendation by the Joint Board that the cost shifts to intrastate were appropriate.

shown in sections III and IV of these comments, the current intercarrier compensation regime does satisfy the goals set out by the FCC in this proceeding, and should be retained.

B. The Proposed Bill-and-Keep Alternatives are at Odds With the Act.

The effect of the OPP Staff's bill-and-keep proposals is to recover all local exchange costs from end user customers. This is essentially a return to the board-to-board rate making process of the 1930's, in which all costs of local exchange facilities were recovered not from toll services (and service providers), but from local exchange customers via their local rates. This is at odds with the Act[43], which requires that only a reasonable share of local exchange costs be recovered from local exchange customers through their local exchange rates. Only a reasonable share certainly does not mean all, as envisioned by the plans. The push by the FCC for the "supposed" regulatory simplicity that will be achieved when all local exchange costs are recovered from the local rates of end user customers must, from a legal standpoint (if not from a practical and universal service concern standpoint), stop short of adopting bill-and-keep and forcing the recovery of all of the local exchange costs, a portion of which should economically be recovered from service providers, to be recovered from end user local exchange rates. The FCC Staff proposals are clearly at odds with the Act when proposing bill-and-keep for IXC, CMRS and LEC and CLEC toll services intercarrier compensation. The proposals are likely at odds with the Act for LEC and CLEC local service intercarrier compensation as well.

[43] Act, Section 254(k).

C. The Proposed OPP Staff Bill-and-Keep Alternatives Harm Consumers.

It is clear that the OPP Staff proposals envision that all intercarrier compensation, initially for local and possibly CMRS interconnection and ultimately for IXC access interconnection, be recovered from end users.[44] The FCC suggests that this can be accomplished in one of two ways. Either flat rate charges can be increased or a usage sensitive charge, billed to the called party, would be assessed to the local customer by the terminating carrier. Presumably, for originating access, if usage sensitive charges were selected, an originating usage sensitive charge would be assessed to the originating customer by the network provider to whom the calling party or end user is connected. Unfortunately, conspicuously missing from the FCC's goals in this proceeding is the goal of promoting and advancing universally available service.[45] The bill and keep proposals ignore universal service and customer concerns and would make it difficult to comply with the provisions of the Act[46] requiring that rural rates be reasonably comparable to those in urban areas.

- Rural carriers recover a higher proportion of their revenues per-line from intercarrier compensation than do larger urban carriers and rely on these wholesale revenues to build and maintain the network. The elimination of intercarrier compensation, and the imposition of bill-and-keep, would cause proportionately

[44] NPRM, paragraphs 51, 55, 60, 123 and 124.
[45] The FCC does in paragraphs 123 and 124 of the NPRM recognize that there will be an impact on end users and universal service and requests comments on that impact.

higher increases in the rates for rural carrier end users, than would be the case for a larger urban carrier and its end users. If the revenues are not replaced, the result will be a deterioration of the rural telecommunications infrastructure.

- Traffic sensitive charges to the terminating end user that receives the call (or to the originating and terminating end users for access calls) would likely not be well received by any end user and would particularly harm low income end users and end users in rural high cost areas because they will have disproportionately high increases in their rates.

- Increasing the flat rate of all end users to recover interconnection costs would not recover the costs from the proper end users and would again harm low-income end users and end users in rural high cost areas because they would have disproportionately high increases in their rates.

- If federal and state universal service funds were redesigned to deal with this disproportionate increase in rural versus urban rates, the fund sizes (already an issue) would increase, solely to support free access or use of the network of other carriers by service providers.

[46] Act, Section 254(b)(3).

- There will likely be no offsetting benefit in service provider rates. It is unlikely that, in the long term, these providers will flow through to customer rates particularly in rural areas, the cost decreases the providers will receive.

The small LECs represented by the ORTC estimate that local exchange customer rates for the customers they serve would have to increase on the average by $62.00 per loop per month to recover the lost interconnection compensation if the OPP Staff bill-and-keep intercarrier compensation proposals were adopted ($30 as a result of the elimination of Federal interconnection compensation and $32 as a result of the elimination of state interconnection compensation). It is simply unreasonable to expect end user customers to pay these inordinate increases, simply in order to allow service providers the use of ORTC members' networks for free and to provide them with a financial windfall. Recovery of these costs inappropriately from end users rather than from the appropriate service provider will harm universal service because local rates will be increased to unreasonable and unaffordable levels, particularly in the rural areas served by the ORTC companies.

D. **A Number of Issues, Including Costly Implementation Issues Are Ignored by the OPP Staff Proposals.**

The OPP Staff proposals ignored the following significant issues:

- A significant amount of LEC-LEC, LEC-CLEC and CMRS-LEC or CLEC traffic use the facilities of a tandem or transiting carrier to complete calls.[47] The transiting carrier has no end user (originating or terminating) who benefits from the call, and thus under the OPP Staff proposed bill-and-keep proposals, there is no end user from whom to recover the transiting costs.

- For access traffic, the local LEC or CLEC does not have a retail relationship with the toll end user. The end user is the IXC's or ISP's customer. Consequently, there is no retail end user to whom the LEC or CLEC can bill for the facility costs to originate, transport or terminate the call.

- The design and rate levels for existing one-way optional and two-way mandatory and optional calling plans is based on the interconnection costs to transport and terminate these calls. Bill-and-keep would require a substantive overhaul and reevaluation of these plans.

- The design of IXC and CMRS rates includes the costs of interconnection. These rates would have to be reevaluated and redesigned.

The OPP Staff proposals ignore the following costly implementation issue:

[47] NPRM, paragraph 71.

- The bill and keep proposals in the NPRM would cause significant additional transaction costs (usage measurement and billing) for LECs. Although the NPRM recognizes in paragraphs 51, 172 and 177, that additional transaction costs are likely under bill-and-keep, the NPRM asserts in paragraph 177, that there will be minimal additional costs since measuring is now a component of operations. This is wrong. Significant additional measuring and billing capacity, perhaps doubling or more the existing capacity and costs, will be necessary to collect and bill terminating usage by terminating end user. This process currently does not exist.

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ADDITIONAL INTERCARRIER COMPENSATION ISSUES COULD BE CONSIDERED BY THE FCC EITHER IN THIS NPRM OR OTHER PROCEEDINGS

The following three compensation issues could be considered by the FCC:

1. CMRS provider's bill CMRS customers a terminating rate whenever wireless calls are terminated to CMRS customers from a customer connected to the wireline network. Presumably, this charge recovers the CMRS provider's termination costs. However, service providers are also required to pay the CMRS provider for the use of their facilities to terminate CMRS calls. Consequently, CMRS providers are compensated twice for the use of its facilities to terminate the calls from customers connected to the wireline network – once by CMRS customers and again by the wireline service providers. This double recovery by CMRS providers potentially

results in inappropriate windfall revenues at the expense of either the CMRS customers or the customers of the wireline providers who must ultimately pay for this CMRS provider double recovery. The FCC could resolve the CMRS double recovery issue by eliminating terminating compensation to the CMRS provider from IXCs, LECs or CLECs as long as the CMRS provider continues to bill a terminating charge to its CMRS customer.

2. Arbitrage exists between long-distance calling via an IXC that pays access charges in compensation for the use of a CLECs or LECs network versus an ISP IP telephony long-distance call where the ISP pays nothing for the use of the CLEC or LEC networks. This arbitrage results from apparent FCC reluctance to make ISPs follow the same rules that IXCs must follow. The ISP exemption to paying access charges was for information service traffic using the switched network. Arguably, this exemption did not run to voice long-distance traffic carried over the Internet and thus this traffic, when identified could be subject to access charges. The FCC has demurred, however, from allowing LECs to charge access charges to ISPs for this traffic. The solution could be for the FCC to allow any LEC that can identify this traffic to begin to charge access rates to the ISP service provider. If the FCC were to eliminate the exemption for ISP Internet-bound traffic, this problem would no longer exist. Short of this action, alternative LEC and CLEC services, such as high speed DSL, will ameliorate this problem.

3. It is highly likely that CMRS providers and LECs, and potentially CLECs and LECs, have differing network cost characteristics. As the FCC notes, it has required LEC interconnection rates with CMRS providers and CLECs to be symmetrical and equal the LECs costs. If this requirement is lifted, the FCC is concerned that regulators may have to evaluate the costs of differing networks. The solution to this concern is to allow carriers, without regulatory intervention in the form of repeated cost proceedings and analysis, to negotiate compensation agreements based on their costs if they wish, or to use symmetrical and equal rates if that is acceptable in their negotiations. If disputes arise, they can be arbitrated by the appropriate judicial or regulatory authority.

CONCLUSION

For the reasons stated above, the Commission should not adopt bill and keep as the system for intercarrier compensation. The move away from the current intercarrier compensation system to bill and keep for all interconnection traffic is theoretically and economically incorrect, at odds with the Act, harms consumers, and ignores universal service concerns.

Respectfully submitted,

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ATTACHMENT A

INTERCARRIER COMPENSATION PROCESS FOR CURRENT LEC, CLEC, IXC, ISP AND CMRS SERVICES

A. Toll Service Provided by IXC's - Access Charges Paid by IXC's to LEC's and CLEC's

1. Basis of Compensation for IXC Toll Traffic. The IXC is the customer's service provider and collects the revenues for the interstate or intrastate toll call. The IXC uses the revenues to cover its costs and to pay the providers of the network used to complete the call (usually LECs or CLECs) for their network costs (reflected in access charge rates) to originate, transport and terminate the call.[48] The charges for LEC access are cost based and tariffed at the FCC for interstate access and at the State Commission for intrastate access. CLEC access charges are not tariffed and until the recent FCC CLEC Access Charge Order[49] rates could be established at any level desired by the CLEC.

[48] The LECs filing these comments are network access providers. They provide the network facilities that retail toll, wireless and internet service providers utilize to complete (originate, transport and terminate) calls for their retail services in rural areas. The rural LEC network access providers have no retail relationship with the service provider's customer and therefore there is no basis, under the FCC Staff's bill-and-keep proposals, for the LEC access providers to charge local exchange end users connected to their network the access costs of these service providers.

[49] CC Docket No. 96-262, Seventh Report and Order, FCC 01-146, released April 27, 2001 (CLEC Access Charge Order).

2. Issues Involving Access Charge Compensation. Beginning with the creation of access charges by the FCC in 1978 in CC Docket No. 78-72, the efficiency and validity of the intercarrier compensation regime involving access charges has not been at issue. The issue has always been the level of the access charge rates – a separate issue from the validity and efficiency of the compensation regime. There have been three basic access rate level issues:

a) LEC access rates included cost recovery for joint and common loop costs. The intent of the recovery of these costs in access rates from IXCs was to reduce the level of these costs that would have to be recovered in local exchange rates, thus keeping low local rates and thereby promoting universally available service. Since 1978, based on the constant urging of the IXC's to lower access rates (culminating with the CALLS plan[50]), the FCC has moved the access charge recovery of all loop costs for price cap (primarily large LECs) to end user subscriber line charges (SLCs) or to various universal service funds. A similar result will occur for smaller (primarily rate-of-return) LECs if the FCC adopts the MAG plan[51]. State Commissions are, in a like fashion, removing for large LECs these costs from intrastate access rates and recovering the costs from local rate increases or intrastate universal service funds. The net effect of these changes has been a dramatic drop in LEC access rate levels, both interstate and intrastate.

[50] CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (CALLS Order).

b) LEC access rates reflect costs and thus rates may vary geographically, reflecting the differing areas served by the LECs (higher cost to serve rural versus lower cost to serve urban and suburban). IXCs are required by the Act to provide the reasonably comparable rate levels to urban and rural areas[52]. This requirement and the geographic differences in access rate levels has caused IXCs to geographically average their toll rates to customers, charging slightly higher rates to urban customers in order to recover the higher rural access charges. Over time this issue has been substantially ameliorated by the significant reduction in urban and rural access charges and by the creation of toll rate plans by IXCs, designed for differing market segments. Currently, because of access rate reductions, the level of rate averaging caused by differences in urban and rural access rates is likely to be much less significant than the increases in toll rates (or the lack of reduction in toll rates to account for access reductions) by the major IXCs.

c) CLEC access rates are not tariffed and consequently, some CLECs have charged access rates at levels much higher than the LECs serving the same geographic area. Presubscribed IXCs were put in the position of paying these high (quite likely non-cost based) access rates or refusing to serve the CLECs customer. This access rate issue has recently been addressed by the FCC in the CLEC Access Charge Order. In that Order, the FCC essentially constrained the

[51] CC Docket Nos. 00-256, 96-45, 98-77 and 98-166, Notice of Proposed Rulemaking, FCC 00-448, released January 5, 2001 (MAG plan).
[52] Federal Telecommunications Act of 1996, Section 254(b)(3) and Section 254(g).

level of CLEC access rates to the level of the LECs serving the same geographic area.

3. Resolution of Access Charge Issues. From 1978, when access charges were initiated until the present, the validity and efficiency of the compensation regime underlying access charges has never been at issue – it is clear that the IXC owes (out of the revenues it collects from its customers) the CLECs and LECs for the use of their networks to originate, transport and terminate calls from their customers. The only issue has been the level of the access rate that would be paid. Actions taken (or being taken) by the FCC and State Commissions to lower large LEC access rates have largely resolved this issue.

B. ISP Internet Dial Up Service – Access Charges Paid by ISP to CLEC's and LEC's

1. Basis of Compensation for ISP Internet-bound Traffic. The service provider for ISP Internet-bound traffic is the ISP. Like an IXC, the ISP bills and collects revenues from the customer and under the current intercarrier compensation regime, is responsible for paying other carriers (LECs and CLECs) for the use of these facilities to originate, transport and terminate ISP Internet-bound calls on or beyond

the Internet. As the FCC recently stated in its ISP Intercarrier Compensation Order[53], ISP Internet-bound calls are jurisdictionally interstate. Consequently, interstate access charges should apply to this traffic. However, in the early 1980's the FCC imposed an exemption to paying access charges for enhanced service providers, including ISP's. As a result of this exemption, ISP's had to pay for an access line (at the local business flat rate) to connect their premise to the LEC of CLEC switching office to obtain access to the switched network. Compensation for this traffic, as a result of the exemption, should have resulted in the originating, transiting and terminating CLEC or LEC billing a zero access rate to the ISP for the ISP's customers use of their facilities to originate, transport and terminate the ISP Internet-bound call. In other words, calls would be completed by the CLECs and LECs at a zero rate or effectively bill-and-keep for the use of their network facilities.

2. Issues Involving ISP Internet-bound Traffic Compensation - Even though the appropriate intercarrier compensation mechanisms were in place and this traffic was and is under the jurisdiction of the FCC, significant market distortions have occurred because of CLEC and ISP application of the intercarrier compensation process.

ISP Internet-bound traffic is clearly interstate and thus subject to access charges (at a zero rate under the FCC's exemption). However, because of the large volume of ISP Internet-bound traffic originating from ISP customers connected to LEC networks which transited CLEC networks to reach the ISP, CLECs began to claim that this

[53] CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131, released

traffic was local and that the LECs not the ISP service provider owed the CLEC terminating compensation for the use of their network facilities. Again, the underlying basis of intercarrier compensation was not challenged or claimed to be faulty. The problem was that the CLECs were allowed to misapply the current intercarrier compensation regime because of the exemption given to the ISPs. First, they misidentified the customer's service provider for the ISP Internet-bound traffic as the LEC (who is simply the originating access provider), when in reality the service provider was the ISP. Second, they claimed that the traffic was local and terminated via their network to the ISP, when in reality the traffic is interstate and simply transited the CLEC and is terminated on or beyond the Internet. Because of this misuse of the current intercarrier compensation rules:

- Significant amounts of revenue were inappropriately paid to CLECs by LECs for the use of their network to terminate "local" ISP Internet-bound traffic that in reality is interstate and does not terminate over CLEC networks to ISP's.

- CLECs were incented by this inappropriate revenue stream to change their business plans from serving all residential and business customers in competition with the LEC, to serving only ISPs. In fact, they were disincented from serving residential and business customers with dial-up ISP service, because then they would have to pay compensation to terminate their traffic.

April 27, 2001 (ISP Intercarrier Compensation Order).

- CLEC and ISP business relationships and rate structures were distorted. ISP's became CLECs and offered significant uneconomic discounts and even free ISP service to ISP Internet dial-up customers.
- The introduction of new high speed (DSL) non-dial-up technologies and services to reach ISP's and the Internet was disrupted and delayed because these technologies were not subject to dial-up intercarrier termination charges.

3. Resolution of ISP Internet-bound Traffic Issues. The validity and efficiency of the underlying compensation process for ISP Internet bound traffic has never been at issue – the process was simply misused by the CLECs leading to significant market distortions. The FCC's recent Intercarrier Compensation Order significantly reduces the compensation that CLECs receive for ISP Internet-bound traffic and thus reduces the incentives for market distortion. Although the FCC clearly stated that ISP Internet-bound traffic is interstate (and thus subject to interstate access charges paid by the ISP service provider at a zero rate as long as the exemption is in effect), the FCC has not yet eliminated the current misapplication of the intercarrier compensation process by the CLECs. Instead, the FCC continues to require the LECs to pay compensation to the CLECs as if the ISP Internet-bound traffic were local traffic terminated by the CLEC. Clearly this is wrong and continues the misapplication of the intercarrier compensation process. In this proceeding, the FCC could take another step by recognizing that the ISP is the customers service provider, but due to the access charge exemption for ISP Internet-bound traffic, CLEC and

LEC access charges for originating, transporting and terminating this traffic should be applied at a zero rate – in other words, bill-and-keep. In the longer term, the FCC should eliminate the exemption for ISP Internet-bound traffic in order to insure that ISP service providers pay, as do other service providers for their customers use of network facilities to originate, transport and terminate calls

a. Commercial Mobile Radio Service (CMRS) – Compensation Between CMRS Providers and LECs, CLECs and IXCs

1. Basis of Compensation for CMRS Traffic. When a CMRS call is originated by a customer connected to the wireline network of a LEC or CLEC, the LEC or CLEC or another toll provider is the service provider, bills and collects the revenue from the customer, uses the revenues to recover its costs and is responsible for paying the CMRS provider for the use of its network facilities to terminate the call. When a call is originated by a CMRS customer connected to the wireless network and the call is terminated to a wireline customer connected to a LEC or CLEC network, the CMRS provider is the service provider. The CMRS service provider bills and collects the revenue from the customer, uses the revenues to cover its costs and is responsible for paying the LEC or CLEC for the use of its network facilities to transport and/or terminate the call.

Generally, intercarrier compensation rate levels for CMRS traffic is based on negotiated contractual arrangements between the parties exchanging the CMRS traffic.

2. Issues Involving CMRS Compensation. Occasionally, as with any contractual arrangement, disputes arise and these disputes are resolved by the FCC (which has jurisdiction over CMRS compensation arrangements) or by the courts. There are, however, no CMRS compensation issues which call into question the validity or efficiency of the current intercarrier compensation process.

One public interest issue involving CMRS provider billing should, however, be addressed by the FCC. CMRS provider's bill CMRS customers a terminating rate whenever wireless calls are terminated to CMRS customers from a customer connected to the wireline network. Presumably, this charge recovers the CMRS provider's termination costs. However, LECs or CLECs are also required to pay the CMRS provider for the use of its facilities to terminate CMRS calls. Consequently, CMRS providers are compensated twice for the use of its facilities to terminate the calls from customers connected to the wireline network – once by CMRS customers and again by the wireline service providers. This double recovery by CMRS providers potentially results in inappropriate windfall revenues at the expense of either the CMRS customers or the customers of the wireline providers who must ultimately pay for this CMRS provider double recovery.

3. Resolution of CMRS Traffic Compensation Issues. There are no issues that call into question the validity or efficiency of the current intercarrier compensation regime. The FCC could, however, resolve the CMRS double recovery issue by eliminating terminating compensation to the CMRS provider from IXCs, LECs or CLECs as long as the CMRS provider continues to bill a terminating charge to its CMRS customer.

D. Local and Intrastate IntraLATA Toll Service – Compensation Between LECs/CLECs

1. Basis of Compensation for Local and Intrastate IntraLATA toll between LECs/CLECs. When a local call is originated by a customer connected to the network of a LEC or CLEC, the LEC or CLEC is the service provider, bills and collects the revenue from the customer, uses the revenues to recover its costs and is responsible for paying the LEC or CLEC where the call is terminated for the use of its network facilities to transport and/or terminate the call. This compensation process is applicable in either direction depending on which LEC/CLEC originates the call for its customer and often called reciprocal compensation. If the LEC/CLEC, and not an IXC, is also the intrastate intraLATA toll provider for the customer's intrastate intraLATA toll calls, the compensation process is the same as the local call compensation process.

The intercarrier compensation rate levels for local and intrastate intraLATA toll traffic are negotiated contractual arrangements between the LECs/CLECs exchanging this traffic.

2. Issues Involving LEC/CLEC Local and Intrastate IntraLATA Toll Compensation. Occasionally, as with any contractual arrangement, disputes arise and these disputes are resolved by the State Commission (which has jurisdiction over local and intrastate intraLATA toll compensation arrangements) or by the courts. There are, however, no local or intrastate intraLATA toll compensation issues which calls into question the validity or efficiency of the current intercarrier compensation process. This process has worked for many years between LECs (generally termed settlements) and is working as well for CLEC and LEC compensation.

3. Resolution of Local and Intrastate IntraLATA Toll Issues. There are no issues that call into question the validity or efficiency of the current compensation process. As disputes arise (primarily involving compensation rate levels or network issues) they are appropriately dealt with by the State Commissions or the courts.